

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN EWING, JR.,

Plaintiff,

v.

UNITED STATES MARSHALL
SERVICE, UNITED STATES MARSHALL
JASON NORWICK, and UNITED STATES
MARSHALL TRACY CARROLL,

Defendants.

No. 4:06-CV-1724 CAS

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's filing of an amended complaint [Doc. 6].

Background

On November 30, 2006, plaintiff filed the instant action seeking monetary relief against defendants "United States Marshals." Noting that plaintiff had failed to state the grounds for filing the action in federal court, this Court liberally construed the complaint as attempting to assert a tort claim for damages under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671, *et seq.* On January 23, 2007, this Court dismissed the action because there was no indication, and plaintiff did not allege, that he had presented his claim to the appropriate administrative federal agency, and that said agency had either denied the claim or failed to act upon it for six months. *See* 28 U.S.C. § 2675.

On February 16, 2007, plaintiff filed an amended complaint, naming as defendants the United States Marshall [sic] Service, United States Marshall [sic] Jason Norwick, and United States Marshall [sic] Tracy Carroll.¹ In addition, plaintiff filed a copy of a settlement claim letter dated July 25, 2006

¹A plaintiff may file an amended complaint once as a matter of course at any time before a responsive pleading is served or, otherwise by leave of court. *See* Fed.R.Civ.P. 15(a).

from the United States Department of Justice. The letter states that if the final settlement is not accepted, "this letter should be treated as a final denial and suit may be filed in the appropriate U.S. District Court not later than six months after the date of mailing of this letter." The Court notes that plaintiff's original complaint was properly filed within six months of July 25, 2006, and therefore was timely, and that plaintiff had in fact exhausted his administrative remedies at that time.

Given the foregoing, and in light of the fact that plaintiff is proceeding pro se and in forma pauperis, the Court will liberally construe the amended complaint as a motion to reconsider the dismissal of the instant action, as well as a first amended complaint.

Having carefully reviewed the complaint and first amended complaint, the Court concludes that summons and process should issue on plaintiff's FTCA claim. As such, the Court will vacate its January 23, 2006 Memorandum and Order [Doc. 4] and Order of Dismissal [Doc. 5], thus reopening the instant action.

Accordingly,

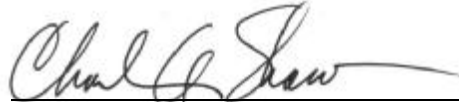
IT IS HEREBY ORDERED that this Court's January 23, 2006 Memorandum and Order [Doc. 4] and Order of Dismissal [Doc. 5] are **VACATED**.

IT IS FURTHER ORDERED that the Clerk shall issue service of process or cause process to be issued on defendants United States Marshall Service, United States Marshall Jason Norwick, and United States Marshall Tracy Carroll by serving summons and a copy of the complaint and amended complaint on all defendants at the following address: 201 S. Vine, Urbana, Illinois 61801.

IT IS FURTHER ORDERED that the United States Marshal's Service shall serve the summons and complaint on the defendants.

IT IS FURTHER ORDERED that defendants shall file a responsive pleading within the time provided by the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk shall docket this case as *John Ewing, Jr. v. United States Marshall Service, United States Marshall Jason Norwick, and United States Marshall Tracy Carroll.*



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 2nd day of March, 2007.